

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

US FOODS, INC.,

Plaintiff,

v.

WILLIAM T. KANE a/k/a BILL T. KANE,
an individual, and RONALD G. LINABURG,
D.D.S, an individual,

Defendants.

JURY TRIAL DEMANDED.

CIVIL ACTION

Case No. 2:19-cv-946-JFC

MOTION TO DISQUALIFY DEFENDANT KANE'S COUNSEL

AND NOW, comes Defendant, Ronald G. Linaburg, D.M.D.,¹ by and through his attorneys, Michael P. Oliverio, Esq., John J. Heurich, Jr., Esq. and The Lynch Law Group, LLC, and hereby files this Motion to Disqualify Defendant Kane's Counsel, and in support thereof, avers as follows:

1. This action arises by way of an alleged breach of guaranty asserted by US Foods in which it seeks to recover amounts allegedly due and owing from certain alleged guarantors—Dr. Linaburg and Kane.

2. At all material times, Dr. Linaburg and Kane were, and remain, principals in an entity known as 5171 Campbells Land Co., Inc. (“5171 Campbells” of “Company”).

3. Since Dr. Linaburg’s involvement with 5171 Campbells, there have been questions regarding the precise ownership interest owned by the respective parties in the Company.

¹ The caption of the instant action improperly reflects that Dr. Linaburg holds a D.D.S. degree, rather, Dr. Linaburg holds a D.M.D. degree.

4. Currently, there is a dispute among Dr. Linaburg and Kane regarding the parties' respective ownership interests in the Company. Even in this action there is both confusion and a dispute as to the percentage of ownership interests in and control of 5171 Campbells. Compare Linaburg's Ans. (Doc. 12), with Kane's Ans. (Doc. 20).

5. At various times, and in various actions, Robert O. Lampl, James R. Cooney, David L. Fuchs, Ryan J. Cooney, Sy O. Lampl and the Law Offices of Robert O. Lampl (collectively, the "Lampl Firm") have represented both Kane and 5171 Campbells. In fact, in addition to the instant action, the Lampl Firm is representing or has represented Kane and/or 5171 Campbells in the following actions in both state and federal court:

a. a pending breach of employment and equity contract action in the Court of Common Pleas of Allegheny County, Pennsylvania captioned *Steven Maglin v. 5171 Campbells Land Co., LLC, William T. Kane, Tyler Mann, Krissy Kochis and Ronald G. Linaburg* and docketed at No. GD 18-4336 (representing Kane, Tyler Mann and Krissy Kochis);

b. three pending confession of judgment actions in the Court of Common Pleas of Allegheny County, Pennsylvania, all three of which are captioned *L-Four, L.P. Successor in Interest to 5171 CRR Associates, LLC v. 5171 Campbells Land Co., Inc., William T. Kane and Simon Cote* and docketed at GD 19-2820, GD 19-2821 and GD 19-2822 (representing both the Company and Kane);

c. a pending mandamus action for access to corporate books and records 5171 Campbells, one of the several purposes of which is to resolve the dispute regarding ownership and control of the Company, in the Court of Common Pleas of Allegheny County, Pennsylvania, which is captioned *L-Four, L.P., and Ronald G. Linaburg, D.M.D. v. 5171 Campbells Land Co., Inc.; 5171 Campbells Land Co., LLC; William T. Kane, and Robert E. Dauer, Jr.* and docketed at GD 19-2405 (representing all defendants);

d. a pending federal action in this district instituted by Store Capital and which is captioned *Store Capital Acquisitions, LLC and Store Master Funding XIII, LLC v. 5171 Campbells Land Co., Inc., William Kane, Frank Kane and Ron Linaburg* and docketed at 2:19-cv-685-WSS (representing both the Company and William Kane); and

e. a pending bankruptcy matter in this district captioned *In re 5171 Campbells Land Co., Inc.* and docketed at 2:19-bk-22715-CMB (representing the Company).

6. Such representation by the Lampl Firm results in a conflict of interest in violation of Rules 1.6 and 1.7 of the Pennsylvania Rules of Professional Conduct as the Lampl Firm has obtained confidential information of Kane and 5171 Campbells related to the claims of the instant litigation and as the interests of Kane and 5171 Campbells are directly adverse to each other and as there is a significant risk that the representation of Kane and/or 5171 Campbells will be materially limited vis-à-vis the dispute regarding ownership and control of 5171 Campbells.

7. Moreover, the Lampl Firm cannot resolve this conflict of interests by simply dropping either Kane in favor of representing 5171 Campbells, or 5171 Campbells in favor or representing Kane, as such would violate the “hot potato” doctrine pursuant to which a firm may not attempt to avoid a conflict by dropping one client like a “hot potato” in order to represent a more favored client. *See Argue v. David Davis Enters., Inc.*, 2004 WL 2480836 (E.D. Pa. 2004); *Int'l Longshoremen's Ass'n, Local Union 1332 v. Int'l Longshoremen's Ass'n*, 909 F. Supp. 287 (E.D. Pa. 1995); *Pyle v. Meritor Savings Bank*, 1993 WL 483196 (E.D. Pa. 1993).

8. As Kane is currently also represented by Dennis Blackwell, Kane will not be prejudiced in this matter by the disqualification of the Lampl Firm.

9. For these reasons, as well as for the reasons set forth more fully in Dr. Linaburg's accompanying brief, which arguments are incorporated herein by reference, this Court should disqualify and remove the Lampl Firm from any further or continued representation of Kane.

WHEREFORE, Defendant, Ronald G. Linaburg, D.M.D., respectfully requests that this Honorable Court grant the instant motion and disqualify Robert O. Lampl, James R. Cooney, David L. Fuchs, Ryan J. Cooney, Sy O. Lampl and the Law Offices of Robert O. Lampl.

Date: November 14, 2019

Respectfully submitted,

THE LYNCH LAW GROUP, LLC

/s/ Michael P. Oliverio

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Counsel for Defendant, Ronald G. Linaburg,
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CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of November, 2019, a true and correct copy of the foregoing **MOTION TO DISQUALIFY DEFENDANT KANE'S COUNSEL** was served upon the following as follows:

Via the Court's CM/ECF System:

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